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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/605,845	10/30/2003	James Baechele	4094	2844
23699	7590	04/22/2005	EXAMINER	
CLAUSEN MILLER, P.C			FIDEI, DAVID	
SUITE 1600			ART UNIT	
10S. LASALLE STREET			PAPER NUMBER	
CHICAGO, IL 60603			3728	

DATE MAILED: 04/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/605,845

Applicant(s)

BAECHLE, JAMES

Examiner

David T. Fidei

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 14-17 and 29-31 is/are rejected.
- 7) ☒ Claim(s) 5-13 and 18-28 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/26/04</u> . | 6) <input type="checkbox"/> Other: ____. |

Specification

1. The abstract of the disclosure is objected to because the acronym EPS is not defined in the abstract. The term EPS should be in parenthesis and preceded by Expanded Polystyrene. Correction is requested. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 1, 2, 14, 16, 29 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Farley (Patent no. 5,154,297). A packaging assembly for holding a product is disclosed by Farley with the assembly comprising; at least one longitudinal support post 40, each post having a top end and a bottom end and integrally formed locking tabs (formed by the L-shape, see page 15, paragraph [0030] of the specification where the shape itself is alleged prevent laterally movement) disposed at the bottom end; and a base 14 having openings at 36 disposed therein, the openings being configured to receive the bottom ends of the support posts in interlocking fashion.

As to claim 2, the openings formed by sections 36 are located at the corners.

Claims 14 and 15 are similar to claims 1 and 2 as treated in the previous paragraphs.

Claim 29 is treated in the same vein as claim 1 and claim 30 emphasizes the notation provided in claim 1 with respect to the specification.

4. Claim 1, 2, 14, 16, 29 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Mertz (Patent no. 5,277,310). A packaging assembly for holding a product is disclosed by Mertz with the assembly comprising; at least one longitudinal support post 40, each post having a top

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end and a bottom end and integrally formed locking tabs (formed by the L-shape) disposed at the bottom end; and a base 8 having openings 19 disposed therein, the openings being configured to receive the bottom ends of the support posts in interlocking fashion.

As to claim 2, the openings 19 are located at the corners.

Claims 14 and 15 are similar to claims 1 and 2 as treated in the previous paragraphs.

Claim 29 is treated in the same vein as claim 1 and claim 30 emphasizes the notation provided in claim 1 with respect to the specification.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3, 4, 16, 17 and 31 rejected under 35 U.S.C. 103(a) as being unpatentable over Farley (Patent no. 5,154,297) in view of Admitted Prior Art. The difference between the claimed subject matter and Farley resides in each support post is formed from a sheet of paper wound into a tubular structure comprising an outer wall and an inner, product-facing wall substantially coextensive with the outer wall and joined to the outer wall at outer ends to define a hollow space therebetween. However, the specification page 14, paragraph [0037] cites this as admitted prior art stating numerous United States and foreign patents disclose such corner posts, "including Hughes U.S. Patent No. 5,267,651, Ortlieb U.S. Patent No. 5,593,039, Qiu U.S. Patent No. 6,186,329, Muyskens U.S. Patent No. 6,247,596 and Stebelton U.S. Patent No. 6,513,662, all incorporated herein by reference".

As to claims 3 and 16, it would have been obvious to one of ordinary skill in the art to modify the corner post of Farley by employing each support post is formed from a sheet of paper

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wound into a tubular structure comprising an outer wall and an inner, product-facing wall substantially coextensive with the outer wall and joined to the outer wall at outer ends to define a hollow space therebetween as taught by the Admission, incorporated herein by reference, in order to provide more sturdy rigid corner support than that of a corrugated sheet.

Claims 4 and 17 merely defined the angled shape of the each side wall forming part of the corner post which would maintain the basic shape of the posts disclosed by Farley.

As to claim 30, bases made from EPS are also admitted prior art, see paragraph [0004]. It would have been obvious to one of ordinary skill in the art to construct the base of Farley from EPS because it would be easier to manufacture, not requiring the separate steps of applying the corner elements to the bottom 14.

7. Claims 3, 4, 16, 17 and 31 rejected under 35 U.S.C. 103(a) as being unpatentable over Mertz (Patent no. 5,277,310) in view of Admitted Prior Art. employing the same logic applied in the paragraph 6 above, it would have been obvious to one of ordinary skill in the art to modify the assembly of Mertz by constructing each support post is formed from a sheet of paper wound into a tubular structure comprising an outer wall and an inner, product-facing wall substantially coextensive with the outer wall and joined to the outer wall at outer ends to define a hollow space therebetween and a base made of EPS for the same reasons, incorporated herein by reference.

Allowable Subject Matter

8. Claims 5-13 and 18-28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

REPLY BY APPLICANT OR PATENT OWNER TO THIS OFFICE ACTION

9. “In order to be entitled to reconsideration or further examination, the applicant or patent owner must reply to every ground of objection and rejection in this Office action. The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. The applicant’s or patent owner’s reply must appear throughout to be a bona fide attempt to advance the application or the reexamination proceeding to final action. A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. The reply must be reduced to writing (emphasis added)”, see 37 CFR 1.111 (b) & (c), M.P.E.P. 714.02.

Pointing out specific distinctions means clearly indicating in the written response what features/elements or distinctions have been added to the claim/claims, where support is found in the specification for such recitations and how these features are not shown, taught, obvious or inherent in the prior art.

If no amendments are made to claims as applicant or patent owner believes the claims are patentable without further modification, the reply must distinctly and specifically point out the supposed errors in the examiner’s action and must respond to every ground of objection and rejection in the prior Office Action in the same vain as given above, 37 CFR 1.111 (b) & (c), M.P.E.P. 714.02.

The examiner also points out, due to the change in practice as affecting final rejections, older decisions on questions of prematurity of final rejection or admission of subsequent amendments do not necessarily reflect present practice. “Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant’s amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c)” (emphasis mine), see MPEP 706.07(a).

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Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fidei whose telephone number is (571) 272-4553. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David T. Fidei
Primary Examiner
Art Unit 3728

dtf
April 17, 2005